

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY PARIS

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E.O. 11652:N/A

TAGS: CPRS, PFOR, FR

SUBJECT: HOLDER-KERKOW EXTRADITION

1. PARAGRAPH 2 OF THIS MESSAGE CONTAINS THE TEXT OF NOTE DEPARTMENT HAS PREPARED FOR PRESENTATION TO GOF CONCERNING DENIAL OF U.S. EXTRADITION REQUEST IN THIS CASE. UNLESS YOU SEE OBJECTIONS, EMBASSY SHOULD TRANSMIT THE NOTE ASAP. IF YOU DO HAVE PROBLEMS, WE WOULD BE HAPPY TO HAVE YOUR COMMENTS.

2. TEXT OF NOTE: THE EMBASSY HAS THE HONOR TO REFER TO THE REQUEST OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE EXTRADITION OF WILLIE ROGER HOLDER AND CATHERINE MARIE KERKOW, TRANSMITTED BY NOTE. NO. (BLANK) OF (BLANK DATE) 1975, AND TO THE FOREIGN MINISTRY'S NOTE NO. (BLANK) OF (BLANK DATE) 1975, TRANSMITTING THE DECISION OF THE COURT OF APPEALS OF PARIS RENDERED ON APRIL 14, 1975.

THE GOVERNMENT OF THE UNITED STATES OF AMERICA HAS NOTED THE DECISION OF THE GOVERNMENT OF FRANCE IN KEEPING WITH THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE
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OF AIRCRAFT, SIGNED AT THE HAGUE DECEMBER 16, 1970, TO PROSECUTE THESE AMERICAN CITIZENS FOR THEIR CRIMINAL

ACTIONS IN CONNECTION WITH THE HIJACKING OF AN AIRCRAFT

IN THE UNITED STATES IN JUNE OF 1972. THE UNITED STATES GOVERNMENT TRUSTS THAT THIS PROCEEDING WILL RESULT IN THE APPLICATION OF A PENALTY PROPORTIONATE TO THE SERIOUSNESS OF THE CRIME AND WHICH WILL FURTHER THE PURPOSE OF THE HAGUE CONVENTION TO DETER AIRCRAFT HIJACKINGS.

IN THE MEANTIME THE INTERESTED OFFICIALS OF THE UNITED STATES GOVERNMENT HAVE HAD THE OPPORTUNITY TO REVIEW THE DECISION OF THE PARIS COURT OF APPEALS ON THE REQUEST FOR EXTRADITION MADE BY THE UNITED STATES, AND THIS EMBASSY HAS BEEN INSTRUCTED TO BRING TO THE ATTENTION OF THE FOREIGN MINISTRY THE SERIOUS CONCERNS OF THE UNITED STATES GOVERNMENT AT THE REJECTION OF ITS EXTRADITION REQUEST.

IN THE VIEW OF THE UNITED STATES GOVERNMENT THE DECISION OF THE AUTHORITIES IN THIS CASE IS INCONSISTENT WITH FRANCE'S OBLIGATIONS UNDER THE TREATY OF EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF FRANCE OF JANUARY 6, 1909, AS AMENDED BY THE SUPPLEMENTARY CONVENTION SIGNED AT PARIS ON FEBRUARY 12, 1970. MOREOVER, DENIAL OF EXTRADITION ON THE SOLE GROUNDS OF AN ALLEGED POLITICAL MOTIVATION FOR THE CRIME HAS THE EFFECT OF WEAKENING DETERRENCE OF AIRCRAFT HIJACKING. THE UNITED STATES GOVERNMENT, AWARE THAT THE FRENCH GOVERNMENT ABHORS HIJACKING NO LESS THAN ITSELF, SINCERELY REGRETS THIS DECISION WHICH IS AT VARIANCE WITH THE INTERESTS OF ALL STATES IN THE SAFETY OF CIVIL AVIATION.

IT IS CLEAR FROM THE LANGUAGE OF THE EXTRADITION TREATIES CITED ABOVE, AND FROM THE DECISION OF THE PARIS COURT OF APPEALS, THAT THE UNITED STATES GOVERNMENT MADE THE SHOWING NECESSARY TO ESTABLISH FRANCE'S TREATY OBLIGATION TO SURRENDER THESE FUGITIVES FOR PROSECUTION IN THE UNITED STATES UNLESS THE DEFENSE ESTABLISHED BY APPROPRIATE EVIDENCE THAT "THE OFFENSE FOR WHICH THE INDIVIDUAL'S EXTRADITION IS REQUESTED IS OF A POLITICAL CHARACTER" AS STIPULATED IN ARTICLE VI OF THE 1909 LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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CONVENTION AS AMENDED BY ARTICLE IV OF THE 1970 SUPPLEMENTARY CONVENTION. ALTHOUGH THE TREATY DOES NOT PRESCRIBE A SPECIFIC DEFINITION OF AN OFFENSE OF A "POLITICAL CHARACTER," AND INTERNATIONAL PRACTICE IS SOMEWHAT VARIED, THE CONSIDERABLE JURISPRUDENCE AND NUMEROUS CASES IN THIS FIELD CLEARLY ESTABLISH THAT MERE POLITICAL MOTIVE IS NOT SUFFICIENT TO CHARACTERIZE A SERIOUS COMMON CRIME AS A POLITICAL OFFENSE. THE LEGAL MEMORANDUM PROVIDED BY THE UNITED STATES GOVERNMENT IN THIS MATTER CITED CASES SUPPORTING THIS CONCLUSION IN THE COURTS OF FRANCE, THE UNITED STATES, BELGIUM, THE UNITED

KINGDOM, GERMANY, AND SWITZERLAND. THE COURT OF APPEALS OF GRENoble STATED THE POINT, IN RE GIOVANNI GATTI, REPORT, RECUEIL SIREY, 1947, II, AT 48; (1947) ANNUAL DIGEST 145 (NO. 70):

"THE OFFENSE DOES NOT DERIVE ITS POLITICAL CHARACTER FROM THE MOTIVE OF THE OFFENDER BUT FROM THE NATURE OF THE RIGHTS IT INJURES. THE REASONS ON WHICH NON-EXTRADITION IS BASED DO NOT PERMIT THE TAKING INTO ACCOUNT OF MERE MOTIVES FOR THE PURPOSE OF ATTRIBUTING TO A COMMON CRIME THE CHARACTER OF A POLITICAL OFFENSE."

IT IS SURPRISING THAT THE OPINION OF THE PARIS COURT OF APPEALS MADE NO REFERENCE TO ANY OF THE ARGUMENTS MADE OR CASES CITED IN THE UNITED STATES MEMORANDUM NOR TO ANY OTHER JURISPRUDENCE. MOREOVER THERE IS NO INDICATION THAT THE COURT GAVE ANY CONSIDERATION TO THE SERIOUS NATURE OF THE OFFENSE OF AIRCRAFT HIJACKING, TO THE UNIVERSAL CONDEMNATION OF SUCH OFFENSES BY THE INTERNATIONAL COMMUNITY OR TO THE MEASURES OF INTERNATIONAL COOPERATION THAT HAVE BEEN TAKEN TO STEM THE TIDE OF SUCH CRIMES. MOREOVER, IT WOULD APPEAR THAT THE COURT BASED ITS CONCLUSIONS, IN LARGE PART, NOT ON EVIDENCE BUT ON A MEMORANDUM OF DEFENSE COUNSEL THAT WAS NEVER SHOWN TO THE UNITED STATES GOVERNMENT.

A STRONG CASE CAN BE MADE THAT SERIOUS CRIMES SUCH AS AIRCRAFT HIJACKING ARE SO DANGEROUS TO HUMAN LIFE AND LIMITED OFFICIAL USE
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SO INIMICAL TO INTERNATIONAL ORDER THAT THEY SHOULD NOT BE REGARDED AS "POLITICAL OFFENSES" REGARDLESS OF THE CIRCUMSTANCES. THE UNITED STATES MEMORANDUM OF UNDERSTANDING WITH CUBA ON HIJACKING OF AIRCRAFT AND VESSELS AND OTHER OFFENSES OF FEBRUARY 15, 1973, PROVIDES THAT THE RECEIVING STATE MAY TAKE INTO CONSIDERATION MITIGATING CIRCUMSTANCES SOLELY WHERE THE FUGITIVES "WERE BEING SOUGHT FOR STRICTLY POLITICAL REASONS AND WERE IN REAL AND IMMINENT DANGER OF DEATH WITHOUT A VIABLE ALTERNATIVE FOR LEAVING THE COUNTRY, PROVIDED THERE WAS NO FINANCIAL EXTORTION OR PHYSICAL INJURY TO THE MEMBERS OF THE CREW, PASSENGERS, OR OTHER PERSONS IN CONNECTION WITH THE HIJACKING.

THE EFFECT OF THE DECISION OF THE PARIS COURT OF APPEALS IS TO CONSTRUCT HIJACKING AS A "POLITICAL OFFENSE" IN ANY CASE IN WHICH A POLITICAL MOTIVE IS ALLEGED EVEN WHERE LARGE SUMS OF MONEY ARE EXTORTED UNDER THE THREAT OF MURDER OF THE PASSENGERS AND CREW. THIS DECISION, IF FOLLOWED BY OTHER STATES, WOULD VIRTUALLY ELIMINATE

EXTRADITION AS A REMEDY IN HIJACKING CASES, AND BY
SUPPRESSING THE MOST EFFECTIVE DETERRENT TO AIRCRAFT
HIJACKING, ENCOURAGE THE COMMISSION OF MORE SUCH CRIMES
IN THE FUTURE.

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
EARNESTLY REQUESTS THE GOVERNMENT OF FRANCE TO CONSIDER
THE SERIOUS IMPLICATIONS OF THIS PRECEDENT. THE EMBASSY
WOULD WELCOME ANY SUGGESTIONS THAT THE FOREIGN MINISTRY
MAY HAVE CONCERNING STEPS THAT MIGHT BE TAKEN TO
CIRCUMSCRIBE THE EFFECTS OF THIS DECISION AND TO AVOID
ITS REPETITION IN THE FUTURE. THE UNITED STATES GOVERN-
MENT IS ALSO CONCERNED ABOUT A NUMBER OF IMPORTANT
PROCEDURAL QUESTIONS WHICH HAVE ARISEN IN CONNECTION WITH
THIS CASE AND WHICH MAY EFFECT THE INTEGRITY OF THE
SUPPLEMENTARY CONVENTION OF FEBRUARY 12, 1970. IF THE
GOVERNMENT OF FRANCE BELIEVES IT WOULD BE USEFUL, THE
UNITED STATES GOVERNMENT WOULD BE READY TO SCHEDULE
DISCUSSIONS CONCERNING THE APPLICATION OF OUR EXTRADITION
TREATY WITH A VIEW TO INSURING THAT IT SERVES ITS PURPOSE
OF BRINGING CRIMINAL OFFENDERS TO JUSTICE. END OF TEXT.
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